FILED
DEC 3 1998
CLERK

(3)

No. 98-659

In The

Supreme Court of the United States

October Term, 1998

EMMA LEE PAUL,

Petitioner

vs.

WILLIAM MORROW and COMPANY, INC., CBS INC., and SIMON & SCHUSTER, INC.,

Respondents

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

---

REPLY TO BRIEF IN OPPOSITION

Emma Lee Paul,
1540 N.W. 203 St.
Miami, Florida, 33169
Phone (305) 653-4221

Pro-Se Petitioner

14 pp

QUESTIONS PRESENTED

1. Whether you the Supreme Court will review The Eleventh Circuit's decision affirming summary judgment in favor for the defendants when compelling questions are raised in the plantiffs petition for writ of Certiorari showing judicial discretion of the lower court when the Plantiff has on record substantial evidence which proves access by the defendants prior to any lawsuit and shows a basis on which a jury can find 1) Proof of ownership by Plaintiff which consist of a valid copyright. (2) and by showing defendants had access to the Plaintiffs work and the works are substantially similar in protected expressions.

TABLE OF CONTENTS

	Page
Table of Authorities..... (e.g. P/F/W/O/C pgs 2-3-4 & 47a thru 53a)	iii
Statement of the Case.....	1
A. Nature of the Case and Course of Proceedings..... (e.g. P/F/W/O/C pgs 4-5)	1
B. Statement of the Facts..... (e.g. P/F/W/O/C pgs 5 thru 10)	2
ARGUMENT..... (e.g P/F/W/O/C pgs 11 thru 17)	5
A. Certiorari Should be granted, Where, the Petitioner can show discretion from with in the District Court which resulted in an improper ruling from the Eleventh Circuit Court when affirming Summary Judgment in favor for the Respondents'.....	5
B. The Eleventh Circuit did err in affriming the District Courts entry of summary judgment where there is Substantial evidence on record sufficient for a jury to find access by the Respondents' to the Petitioners work.....	6
C. There is evidence of Substantial Similarities of Protectable expression between the Petitioners work and that of the Respondents' work.....	6
CONCLUSION.....	9

TABLE OF AUTHORITIES

Page

Cases

Hughes: Consolidated Edison Co. vs. NLRB, 305 U.S. 196,229..... 5

Hughes: Appalachian Coals v. United States, 288 U.S. 244, 360..... 5

Golding v. R.K.O Pictures, Inc., 35 Cal.2d 690, 695 (1950)..... 6

Mikek Holdings. Inc., v. Arce Engineering Co., Inc., 89 R. 3d 1548, 1553..... 6

Patterson v. Aiken 111 F.R.D. 354, 358 [N.D. Ga. 1986].. 9

Autoskill, Inc. v. National Educ. Support Sys., Inc.,994 F..2d 254 (1993)..... 3

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings

I the Petitioner seek review of the Eleventh Circuit's affirmance of a district court order granting Respondents' William Morrow and Co. Inc, CBS Inc, and Simon & Schuster Inc., in motion for summary judgment not as a matter of right but of judicial discretion. The Respondents' (pg 1 of breif) quote I provided all my proof concerning infringment on forms provided me by the district court, what they did not say is the forms provided me by the district court contain no form for access, (Petition for writ- 97a-98a-99a) The Respondents' attorney Mr. Bohrer requested the court to make it clear (e.g P/F/W/O/C pg 23a & 24a) to me how and what I was to use when I presented my reponse to the court. The court did as he ask and it was made very clear (e.g.P/F/W/ O/C pg 23a) I was to use only the set forms provided me and nothing else. (e.g. P/F/W/O/C pg 28a) The Plantiff /Petitioner does question the copying of her work in the transcript with the Court and of how close does the copying have to be, how much similarity did the courts need.(e.g. P/F/W/O/C pg 26a). Mr. Bohrer convinced the court I had to prove my case by direct copying not me and the court knew this (e.g. P/F/W/O/C pg 25a). I said my language was used my words could be found within the pages of the works Queen was Emma, and Emma was Queen. Queen, and Queen characters done everything I did in my life (e.g. P/F/W/O/C pg 20a) my litery expressions are protected by copyright law not the sequence, the plot, the mood as the Respondents' insist the Courts use to prove my Case. The District Court voiced his concern and knew if I presented my case the way the Respondents' requested I would loose my case.(e.g P/F/W/O/C 24a) Substantial evidence is on record with the District Court that proves Access by the Defendents which can reverse summary judgment in favor of the Respondents' due to the discretion of the District Court unawareness of this case I the Petitioner ask releif from you the courts to use your power and set this case for review.

B. Statement of the Facts

Plantiff does have a valid Certificate of Registration dated April 1, 1976 and is agreed is on record by the Respondents'. My autobiographical manuscript is all truth, The Broadcast, the Book, and the Audiotapes of Alex Haley and David Stevens Is all fictionalized. The Story of Alex Haley's paternal family to the birth of Alex Haley's father in the late nineteenth century is all made up. Even Andrew Jackson is all made up. (e.g P/F/W/O/C pg 20a and pg 31a)

In reference to 2b of oppo/brief the defendants attorney Mr. Bohrer Mislead the District Courts when he told the Court that Alex Haley did not write any of the works and that Mr. Haley did not provide any written material for the works, (e.g. P/F/W/O/C pg 19a -20a etc.) again you the Supreme court are told that David Stevens wrote the entire teleplay of the broadcast again you are being mislead that Alex Haley did not help. I was forced to use those transcripts of all three works provided to me from the defendants it is impossible for David Stevens to have used those scripts to create Queen on CBS television--those scripts contain no scenes (e.g. P/F/W/O/C pg 96a) and was never checked by the District Court before I was ordered to use them to see if they were proper to prove my case, which they were not. Mr. Bohrer said everything came from the mind of David Stevens, David Stevens said everything came from the mind of Alex Haley, I find it hard that David Stevens knew nothing of The Bold Truth after all Mr. Stevens worked for over two years with Mr. Haley, wrote scenes with Mr. Haley, and was given finished pages and a 700 page outline along with boxes and boxes of research from Alex Haley. And David Stevens Finds it hard to quantify how much was written my Alex and much by he.(e.g. P/F/W/O/C pg 77a thur 80a). In reference to pg 2 b The Audiotape of Queen does not match the Queen Book one example is the fishnet scene in the Audiotape can be found no where in the Queen book or on the

cassette tapes but can be found inside, "The Bold Truth". (e.g P/F/W/O/C pg 93a thru 95a)

I the Plantiff/Petitioner did file with the District Court interrogatory answers that belong to Alex Haley from another lawsuit and yes he is no longer living and Respondents agree on both pg 2b of Opposing brief. Those interrogatory answers along with a letter from my attorney Kenneth Henson addressed to Mr. Haley prior to any lawsuit, a handwritten note on The Bold Truth from Alex Haley etc.(e.g P/F/W/O/C appendix f.) Substantial evidence on record that clearly could prove my case of Access by the defendants was never considered. Instead the District court told me I could not go back to my prior case because it provided a background.(e.g. P/F/W/O/C pg 19a) and the district court told me the Plantiff he was not going to go back and consider any of the filings on record. (e.g P/F/W/O/C pg 29a). When called upon to adjudicate a copyright dispute a court must compare the works in question. *Autoskill, Inc. v. National Educ. Support Sys., Inc., 994 F.2d 1476 (10th Cir),* Because of the discretion involved here the Eleventh Circuit denied my motion to get this substantial evidence viewed, yet the defendants was permitted to use those same interrogatories in defense to win summary judgment. (e.g. P/D/W/O/C pg 4a) I filed this evidence but yet In quote I was told:

"the motion is denied because the materials were not presented to and considered by the district court".

The respondents quote" these sworn interrogatory answers indicate that Mr. Haley, like Mr. Stevens never read or saw The Bold Truth" Because the defendants were permitted to use those interrogatories for their defense I the Plantiff/Petitioner should be able to use them for my defense. There is substantial evidence on the record that indicates Mr. Stevens, Morrow, CBS, and Simon & Schuster, prior to this lawsuit, had access to The Bold Truth through Doubleday, How because Alex Haley thanked two people which he quotes were very close friends whom helped research in

completion of Haleys novel Roots (e.g P/F/W/O/C pg 55a & 56a) Naming George Sims and Murray Fisher, what is not said in Mr. Haleys acknowlegement is both his friends and is made clear when you view the petition for writ of Certoriari page 67a is both George Sims and Murray Fisher were employed editors on staff with Doubleday Publishing Co.

In reference to the four works at issue in the brief of opposition page 3, when you apply the second test to prove copyright infringment it is not necessary by plot, mood, sequence, themes etc. but by ideals of a manner of expression of fact, when you look at copyright law under these rules the Petitioner is protected from certain compilations, even though they are just compilations of facts that any of us could gather and these compilations can be considered ordinary phrases which are known as common to both generations. Example: pg 29a of Petitioners writ Mr. Bohrer quotes to the District Court "What Ms. Paul is saying is that each of these works in different ways some of them in common ways infringe on her copyright" Which shows in Respondents brief pg 3 and quotes in reference to all three works : "As such, The Bold Truth and the defendants works use many of the same phrases, words, and colloquial expressions commonly used" when you apply copyright protection in this manner the Petitioners Copyright claim of infringment proves the Respondents used her expressions showing substantial similarities in common phrases which make the manner of expression the critical issue. This is also agreed upon by the Respondents' see pg 17a of Petitioners Writ.

ARGUMENT

A. Certiorari should be granted where, the Petitioner can show discretion from the district court which resulted in an improper ruling from the Eleventh Circuit Court when affirming summary Judgment in favor for the Respondents'

Petitioner, Emma Lee Paul seek review from this court when the Eleventh Circuit Court was informed by the District Court that there were no Substantial evidence on record where the plantiff could prove that the defendants had access to her work which resulted in the Eleventh Circuit affirming the order in favor of the defendants summay judgment on lack of access alone. Certiorari is particularly appropriate in such a case when the factual dispute of substantial evidence filed on record by the plantiff was refused for consideration by the district court to prove her case due to discretion of that court when the District Court was totally unaware of the evidence on record simply because he told the Petitioner he did not want to go back and review it. (e.g. P/F/W/O/C pg 29a), Yet the same evidence the District Court denied the plantiff/ petitioner was considered and relied on by both the District court and the Eleventh Circuit court to prove the defense for the defendants win of summary judgment. "Realities must dominate the judgment--*Hughes: Appalachian Coals v. United States, 288 U.S. 344, 360"* Substantial evidence is more then a mere scintilla. It means such relevant evidence as a resonable mind might accept as adequate to support a conclusion--*Hughes: Consolidated Edison Co. Vs. NLRB, 305 U.S. 196,229.* Therefore found in Title 28 U.S.C. Judiciary and Judicial s2072 (a,b): a) the Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof and courts of appeals) b.) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no futher force or effect after such rules have taken effect.

B. The Eleventh Circuit did err in affirming the District Court's entry of Summary judgement where there is evidence on record sufficient for a jury to find Access by the respondents to the Petitioner's work.

Because the Plantiff/Petitioner has on record proof of ownership showing a valid copyright in this particular work, and is agreed upon by the Respondents, and the Petitioner can prove that the defendants had access to her work and show that the works are substantially similiar in protected expressions the Petitioner has proved her claim of copyright infringement. *"Golding v. R.K.O Pictures, Inc., 35 Cal.2d 690, 695 (1950)"* also see *" Mikek Holdings. Inc., v. Arce Engineering Co., Inc., 89 R.3d 1548,1553"* (47a pet/writ/cert) In reference to 5B of Respondents brief where it is said "Because the Eleventh Circuit did not reach the second issue, substantial similarity when they affirmed summary judgment for the defendants because the District Court said I, the plantiff had wholly failed to present evidence from which a jury could conclude Respondents had access to Plantiffs work. The ruling from the Eleventh Court is improper Because I the plantiff did present this evidence which was considered in the defense for the Respondents' only, and find that the Eleventh Circuit did err in Affirming the District Courts entry of summary judgment when Plantiff can show on record with the District Court Substantial evidence proving the interrogatories the courts relied on when granted in favor for the respondents to be untrue, and should be reviewed as such in the authority of the this court.

C. There Is Evidence of Substantial Similarities Of protectable Expression between the Plantiffs work and that of the Defendant

Because the Eleventh Circuit did not reach the issue of substantial similarity, and the Respondents' have convinced the District Court by a hearsay agreement by comparing the works in

question simply by: a) Plot and Theme b) Setting and Sequence of Events c) Mood d) Characterization and e) dialogue
I the Plantiff want to present the actual agreement by my resigned attorney (which only resigned due to a illness in which he had a stroke,) to prove what the actual claim (e.g. P/F/W/O/C pg 69a thru 74a) is when proving the similarities reviewed by copyright law which was my litery expressions which are protected, not by the above as the Respondents' request, but by the similarities between the two works which quote on pg 74a "The copying meets both the extrinsic and intrinsic tests of copyright infringement. The ordinary observer or listener or viewer would perceive subtantial similarity of protected expressions". The Respondents' keep reflecting that Queen and Emma came from two different lives but in reality they are the same, (see oppo/brief pg 3 etc.) On Page 549 of Queen Book Queen and Davis are talking, he quotes:

" Waren't you ever beaten? he asked her in surprise, and Queen felt almost guilty that she, a slave, had not suffered as other slaves."

page 579 of Queen : Both Emma and Queen heard of the bad things; In Quote: "The gossip that she heard intrigued her. She was told extraordinary stories of the black determination to take Washington at its reconstructing word, and grab for equality. She heard of strikes by city workers, or by field hands protesting their pay. She heard of riots and even small armed rebellions against civic authorities who were reluctant to put the new Federal laws into effect. She heard one story of an overseer in Georgia being forced off his plantation by the hands, who would not work for him."

Page 580 of Queen: Both Emma and Queen rely on God.
in quote: " Her faith kept her going, and she had the absolute conviction that God was directing her footsteps, and would bring her, surely and safely, to her promised land."

page 644 of Queen : Both Queen and Emma are related: Alec and Queen had a baby girl In Quote: " Another little girl was born to them, Emma, after Annie and Conway, but Emma died when she was three. She had been playing on the kitchen floor, and drank some lye, while Queen was hanging washing on the line. She died in great pain,"

No where esle is Queen's child Emma mentioned not even on the Television or Cassettes. Where does Queens birth of Emma fit in to the life of Alex Haley? In reference to page 10 d, The Respondents say the record contains no evidence whatsoever with regard to the Broadcast or Audiotapes. During the transcript October 10, 1996 it was agreed upon by the Courts Mr. Bohrer and Emma Paul that each work was the same and would be made three counts, what was in one should be found in the other. Reference is made to this in Petition for Writ of Certiorari page 86a/Yb. The Respondents' also said the names are common names used and bear no similarity, now go to the afterword by David Stevens (Pet/writ/Cert 78a) in quote: " I have invented an untimely death for him. In fact, he lived to a good age. Beyond that, almost all the people are where they should be almost all the time," 28 names can be found in The Bold Truth and in the works of Queen. As discussed on the previous page commcn names is protected expressions of the Petitioner, because the works are confessed to be all fictionalized how can Alex Haleys family have the same names as Emma Pauls family, and how can Queens book begin with the awlful presence of God and Emma Pauls book begin with in the presence of God, no author does it quiet the same way, ever. Another strange similiarity is the size of the familys when you view the similarities in a way of being common the expressions you'll come across is just to many. Keep in mind Emma Lee Pauls' life is real, Alex Haley's Queen is not.

CONCLUSION

I the petitioner did not ask you the Supreme to review my writ for Certiorari for reasons of mistakes or facts but of the discretion from the district court and after reviewing the Respondents' brief the answers to my questions are still unanswered, because these compelling questions of judicial discretion and questions of our Constitution of the United States and the Statues of this State have not been answered in reference to the case when the record for the Petitioner clearly shows and the Respondents' totally agree that the Petitioner is the one who filed on record interrogatory answers of Alex Haley that the Respondents' relied on as their defense to prove they had no access while on the otherhand the District Court and the Eleventh Circuit Court denied the Plantiff herself to use this same substantial evidence in which she filed and which raise disputed matters sufficient enough for a jury to find summary judgment unappropriate when the Plantiff can show ownership, can prove access by the Respondents', and show the Respondents' work is substantially similar to the Petitioners protected expressions. I Emma Lee Paul, Petitioner call upon you the Supreme Court for an exercise of your Court's power to review this case because the departure of this case from the District Court was unappropriate.

As Pro-se I ask this court to grant my case for review with the understanding I am aware to proceed I must be acompanied by legal counsel from the Bar. I am prepared and will be assisted by such counsel to persue this case further within your court. Parties appearing Pro-se are allowed greater latitude with respect of reasonableness of their legal theories. *"Patterson v. Aiken 111 F.R.D. 354, 358 [N.D. Ga. 1986]"*

Therefore I the Plantiff/Petitioner ask relief of this court and request the judgment entered for the Plantiff by the Plantiff in the Eleventh Circuit still stand in the amount of 100 million dollars

from the Respondents' and the Petitioner ask relief of this court to review the entire Petition for writ of Certiorari for the decision frustrates the intent of Congress and cannot be reconciled with that of the Eleventh Circuit in the United States Court of Appeals, leaving participants facing uncertainly over matters that go to the heart of copyright law. Because of the importance of the questions presented by that petition, this court should excercise its supervisory jurisdiction setting this case for review.

Respectfully Submitted,

Emma Lee Paul

Emma Lee Paul
1540 N.W. 203 St.
Miami, Florida, 33169
Phone (305)-653-4221

Pro-Se Petitioner